IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 7TH DECEMBER 2006 / 16TH AGRAHAYANA 1928

Crl.MC.No. 1796 of 2004()

CC.114/2001 of CHIEF JUDICIAL MAGISTRATE, ALAPPUZHA

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PETITIONER:

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1. KANDANKALI SUKUMARAN, RESIDING AT POOCHACHIRA VELI, WARD NO.13 OF MANNANCHERY PANCHAYATH, MANNANCHERRY P.O., ALAPPUZHA.

2. VINOD, S/O. SUKUMARAN, DO. DO.

3. CHELLAPPAN, S/O. KANDANKALI, ETTUKANDATHIL HOUSE, MANNANCHERRY P.O., ALAPPUZHA.

4. SHANMUGHAN, DO. DO.

5. SOUDA W/O. SHANMUGHAN, DO. DO.

6. KOCHUMON, S/O. SHANMUGHAN, DO.

7. SARADA, CHERUVELIL HOUSE, MANNANCHERRY P.O., ALAPPUZHA.

8. SATHEESAN, S/O. SARADA, DO. DO.

9. SULOCHANA, POOCHACHIRA VELI, MANNANCHERRY P.O., ALAPPUZHA.

10. ANIYAPPAN, S/O. SULOCHANA, DO.

11. BIJU, S/O. SULOCHANA, DO.

12. VELAPPAN, RESIDING AT MUKKUCHIRA, DO.

13. KRISHNAPPAN, S/O. SULOCHAN, DO.

14. ULLAS, S/O. KRISHNAPPAN, DO.

15. SAJI, S/O. KRISHNAPPAN, DO.

16. LEKSHMIKUTTY, W/O. VELAPPAN, DO.

17. SINI, D/O. LEKSHMIKUTTY, DO.

18. MINI D/O.LEKSHMIKUTTY, DO.

19. REGHUVARAN @ REGHY S/O. KUTTY,
RESIDING AT UZHUVA, MANNANCHERRY P.O.,
ALAPPUZHA.

20. RATNAMMA, W/O. REGHUVANAN, DO.

21. LALI, D/O. RATNAMMA, DO.

22. MINI SATHYAN, PANDIAN BUILDING,
DWARAKA P.O., GUJARAT.

23. LATHA, D/O. RETNAMMA, RESIDING AT
UZHUVA, MANNACHERRY P.O., ALAPPUZHA.

24. ANANDA WIDOW OF DASAPPAN,
UZHUVA HOUSE, MANNACHERRY P.O., ALAPPUZHA.

25. ANIYAPPAN, S/O. DASAPPAN, DO.

26. SANTHAMMA, W/O. RAVI, DO.

27. PODIYAN, S/O. KUTTY, UZHUVA HOUSE,
MANNANCHERRY P.O., ALAPPUZHA.

28. THANKAMMA, D/O. BHAVANY,
UZHUVA HOUSE, MANNANCHERRY P.O., ALAPPUZHA.

29. JANARDHANAN, DO. DO.

30. RENUKA, D/O. THANKAMMA, DO.

31. MONCY, D/O. THANKAMMA, DO.

32. PONNAPPAN, RESIDING AT THAREURAYIDOM,
MANNANCHERRY P.O., ALAPPUZHA.

33. SUNANDHA, W/O. PONNAPPAN, DO.

34. SHYJAN, S/O. PONNAPPAN, DO.

35. MINI, W/O. SHYJAN, DO.

36. ASANAR @ KOYA, UZHUVA HOUSE, DO.

37. IYSHABI, W/O. ASANAR, DO.

38. LAILA, D/O. IYSHABI, DO.

39. SREEJA, D/O. IYSHABI, DO.

40. ANI, S/O. PONNAPPAN, ITTUMVELIYIL,
MANNACHERRY P.O., ALAPPUZHA.

41. MANOJ, S/O. PONNAPPAN, DO.

42. AMMINI, W/O. THAMPAN, DO.

43. AMRUTHA, DO.

44. KUNJUMON, S/O. AMRUTHA, DO.

45. SETHU, S/O. AMRUTHA, DO.

BY ADV. DR.P.S.KRISHNA PILLAI

RESPONDENTS:
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1. CHELLAMMA, WIDOW OF ANANDAN,
THARAYIL HOUSE, WARD NO.11, OF MANNANCHERRY
PANCHAYATH, MANNANCHERRY P.O., ALAPPUZHA.

2. STATE OF KERALA, REPRESENTED BY
THE DIRECTOR OF PROSECUTIONS, HIGH COURT OF
KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI PUZHAKKARA MUHAMMED.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 07/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.M.C. NO. 1796 of 2004

Dated 7th day of December, 2006

ORDER

The accused 45 in number in C.C.No.114/2001 in the court of the chief Judicial Magistrate, Alappuzha with respect to the offences under sections 143, 144, 147, 148, 149, 447, 427, 392 and 506(ii) IPC, taken cognizance directly by the court on the basis of the private complaint filed by the de facto complainant are the petitioners. It is submitted that the petitioner filed a complaint before the police and the police after investigation submitted a refer report. Subsequently the de facto complainant filed the private complaint. It is submitted that allegations are absolutely false. It is pointed out that in execution of O.S.163/1975 of the Munsiff's Court, Alappuzha, delivery of the property was made on 20-3-1986 and on 24-3-2000. It is the execution that took place on 24-3-2000 that has been made the subject matter of the police complaint and the private complaint. More over, the de facto complainant and her children had instituted O.S. 871/2001 before the Munsiff's court, Alleppey with

respect to the same cause of action and the same was dismissed by a considered order vide annexure B. On a perusal of Annexure B judgment it is seen that it is with respect to the alleged incident of execution on 24-3-2000 of the decre in O.S.163/75 that the de facto complainant has submitted the complaint and filed the civil suit. It is with respect to the same incident that the private complaint has been filed. It was held in the judgment in the civil suit that there is no evidence to show that the de facto complainants/plaintiffs were present on the particular day. The allegation in annexure A copy of the complaint is that 55 persons are named and other 75 who could be identified by sight who are also alleged to have been involved in the incident. The allegation is that the mob armed with iron rods, pick-axe, swordstick etc, destroyed the residential house and took away valuables, ornaments of 21 sovereigns and Rs.5700/-, ration card, utensils etc.

2. The civil court has found that the allegations are absolutely false vide annexure B judgment. On a perusal of the complaint and annexure B judgment in the civil case, it appears that the private complaint filed is based on false and fabricated

allegations and amounts to abuse of process of court and is liable to be set aside. In the result, the proceedings pending in C.C.114/2001 in the court of the Chief Judicial Magistrate is herewith quashed.

The Crl.M.C. is allowed.

K.R.UDAYABHANU,JUDGE.

kvm/-